

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of the Secretary

Offset Requirements  
(LAC 33:III.504, 603, and 607)(AQ327E)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to implement transitional permitting procedures between the effective date of the redesignation of the Baton Rouge area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the effective date of the area's (or portion thereof) nonattainment designation with respect to the 2008 8-hour ozone NAAQS.

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) emissions are governed by Nonattainment New Source Review (NNSR) procedures provided by LAC 33:III.504. Under NNSR, prior to the construction of a new major stationary source or a major modification of an existing major stationary source, an owner or operator must obtain "offsets" for significant increases in emissions of NO<sub>x</sub> and VOC in the form of Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, EPA redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. Therefore, on December 30, 2011, NNSR provisions, including those requiring offsets for significant NO<sub>x</sub> and VOC increases, will no longer be mandated by the Clean Air Act (CAA). However, as discussed below, another ozone standard will soon be implemented, and one or more parishes within the Baton Rouge area will once again be designated as nonattainment. Further, the maintenance plan for the area, required by the CAA to ensure Baton Rouge remains in compliance with the 1997 ozone NAAQS, assumed no net growth in point source NO<sub>x</sub> and VOC emissions.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm. This standard became effective on May 27, 2008. However, on September 16, 2009, the EPA announced it would reconsider the ozone NAAQS and therefore delayed implementation of the 2008 standard. On January 19, 2010, EPA proposed that the primary standard should be set within the range of 0.060 to 0.070 ppm. However, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Because the ongoing review of the 2008 ozone standard will not be completed for several years, EPA is now moving ahead with certain required actions to implement the 2008 standard.

Based on air quality data from 2008-2010, the department recommended that East Baton Rouge Parish be designated as nonattainment. EPA expects to finalize area designations in

spring of 2012. For the short period of time during which East Baton Rouge will be an attainment area, and until the department completes final rulemaking to address NNSR in the Baton Rouge area subsequent to its designation under the 2008 ozone NAAQS, this Emergency Rule will require owners or operators to offset certain increases of NO<sub>x</sub> and VOC emissions in order to ensure that Baton Rouge continues to make progress toward attainment of the 2008 ozone NAAQS. Further, in order to mitigate increases of NO<sub>x</sub> and VOC emissions in Ascension, Iberville, Livingston, and West Baton Rouge Parishes consistent with the Baton Rouge area's maintenance plan, this Emergency Rule will also apply to owners or operators in those parishes as well.

This Emergency Rule is effective on December 30, 2011, and shall remain in effect for a maximum of 120 days. For more information concerning AQ327E, you may contact the Air Permits Division at (225) 219-3147.

Adopted this 21st day of December, 2011.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

#### Chapter 5. Permit Procedures

#### §504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes

A. Applicability. Except as specified in Subsection M of this Section, the provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated in accordance with Section 107 of the federal Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

A.1. - L. Table 1. ...

\* \* \*

M. The provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish's designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is either attainment, marginal nonattainment, or moderate nonattainment.

1. New Stationary Sources. The owner or operator of a new stationary source shall provide offsets for potential VOC and NO<sub>x</sub> emissions in excess of 50 tons per year.

2. Existing Stationary Sources

a. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of VOC shall provide offsets for each net emissions increase of 25 tons per year or more of VOC.

b. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of NO<sub>x</sub> shall provide offsets for each net emissions increase of 25 tons per year or more of NO<sub>x</sub>.

c. Consideration of the net emissions increase shall be triggered for any project that would increase emissions of

VOC or NO<sub>x</sub> by 25 tons per year or more, without regard to any project decreases.

3. Offsets shall be required at a ratio of 1.10 to 1 unless a higher ratio is mandated by Subsection L, Table 1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:

## **Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking**

### **§603. Applicability**

A. ...

B. Notwithstanding Subsection A of this Section, sources located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes may participate in the emissions banking program for purposes of securing offsets where required by LAC 33:III.504.M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 38:

### **§607. Determination of Creditable Emission Reductions**

A. - C.3. ...

4. Quantify baseline emissions as follows:

a. for stationary sources located in ozone nonattainment areas:

i. - ii. ...

b. for stationary sources located in ozone attainment areas, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section.

C.5. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), LR 38:

Peggy M. Hatch  
Secretary